IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 20 OF 2005

Mr. Valeriano Barretto,
Sub Jail, Sada,
Vasco-da-Gama. ... Petitioner

versus

State of Goa through
Public Prosecutor. ... Respondents

Ms. Asha Dessai, Advocate under the Legal Aid Scheme for the Petitioner.

Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE : 14TH SEPTEMBER,2005.

ORAL JUDGMENT

Rule.

2. Heard forthwith.

3. Heard Ms. Asha Dessai, the learned Counsel appearing on behalf of the petitioner and Ms. Winnie Coutinho, the learned Public Prosecutor on behalf of the State/Respondent.

4. The petitioner herein is accused no.1 in Sessions Case No.2/2004/1, now pending trial before the learned Ist Additional Sessions Judge, Margao.

5. In this petition, the petitioner has raised two grievances, firstly, he complains that he is suffering from knee ailment which is being treated at the Goa Medical College, Bambolim. As far as this grievance is concerned, the very letter dated 30-6-2005 of the Assistant Superintendent of Sub Jail Sada, Vasco-da-Gama shows that the petitioner is being regularly treated at the Goa Medical College and as per advice given the prescribed medicines are being given to him regularly. Nothing, therefore, survives in that grievance. In case, the petitioner is entitled to bail on medical grounds, it would be a different matter and the petitioner would always be at liberty to apply for bail on that ground to the learned Additional Sessions Judge, Margao.

6. The second grievance of the petitioner is that the trial of his case is moving at a slow speed. According to him, although 21 months have passed, only 3 witnesses have been examined.

7. A report regarding the progress of the trial in Sessions Case No.2/2004/1 was called for from the learned Additional Sessions Judge, Margao. In the said report, the learned Additional Sessions Judge has set out the progress made in the trial of the case and has stated that as on 19-8-2005 8 prosecution witnesses were examined and the trial was fixed on 2-9-2005. The learned Additional Sessions Judge has attributed the delay to the prosecution who sought adjournments as well as to the accused who changed their Advocates. It is also stated by the learned Additional Sessions Judge that the trial is likely to take some more time as there are other custody matters pending before him which are older to Sessions Case No.2/2004/1.

8. The Petitioner would certainly be justified in raising his grievance that the trial is proceeding at rather a slow speed. Although, the accused appeared before the learned Additional

Sessions Judge on 21-1-2004 after the case was committed to the Court of Sessions, it appears that the framing of charge itself took almost a year which under no circumstances can be justified. The right to a speedy trial is now recognised to be a fundamental right of an accused who is facing a trial, and in this case into serious offences. It appears from the report of the learned Additional Sessions Judge that adjournments have been sought by the prosecution on very flimpsy grounds and that has also been one of the reasons that the trial is being delayed. In adjourning cases, the learned Additional Sessions Judge is certainly entitled to impose costs upon the prosecution to ensure that the witnesses are examined as and when they are present. The explanation 2 in Section 309 is clear on this aspect. The trial once having started against the accused, there is no other option but to complete the same by following the provisions of the Code of Criminal Procedure, 1973 particularly those of Section 309 of the said Code.

9. The learned Counsel appearing on behalf of the petitioner submits that an outer limit of one year could be given to the learned Additional Sessions Judge to complete the trial of

the Sessions Case. In my view and as already stated, no such specific direction is required to be given since otherwise, the learned Additional Sessions Judge is bound to complete the trial, once started by him, as expeditiously as possible, considering the provisions of the said Code to which reference has been made.

10. In the light of the above, the petition is disposed of with a direction to the learned Additional Sessions Judge to complete the trial of the case following the aforesaid provisions of the said Code, as expeditiously as possible.

Rule made absolute in the above terms with no order as to costs.

N. A. BRITTO, J.

RD.